

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

ROBERT MORTENSEN and)	
LINDA MORTENSEN,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
vs.)	
)	NO. <u>3:10-cv-13 (CDL)</u>
BANK OF AMERICA, N.A., ET AL.,)	
)	
Defendants.)	
_____)	

**NOTICE OF REMOVAL OF CIVIL ACTION FROM THE
SUPERIOR COURT OF GREENE COUNTY, GEORGIA**

COMES NOW, BANK OF AMERICA, N.A. a named Defendant in the Amended Complaint filed by Plaintiffs in Greene County Superior Court, on its own behalf, and on behalf of Bank of New York, N.A.¹, formerly delineated as a Defendant in the original Complaint filed by Plaintiffs in Greene County Superior Court but apparently substituted for Bank of America, N.A. in Plaintiff's Amended Complaint (hereinafter "BOA"). BOA, by and through its undersigned counsel, preserving all defenses, files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, of that certain action known as *Robert Mortensen and Linda Mortensen vs. The Bank of New*

¹ Bank of New York, N.A. has no interest in this matter

York, N.A., et al., Case Number 09-CV-863, from the Superior Court of Greene County, Georgia to this Court, respectfully showing the Court as follows:

1.

A true and accurate copy of all pleadings and orders filed to date in that certain civil action identifiable as *Robert Mortensen and Linda Mortensen vs. The Bank of New York, N.A., et al.*, Case Number 09-CV-863, brought in the Superior Court of Greene County, Georgia (hereinafter, the "Civil Action") are attached hereto collectively as **Exhibit "A"**. BOA has not been served with process and reserves all rights and defenses.

2.

BOA is a named Defendant in the Civil Action. BOA gives notice that the Civil Action is an action in which there is complete diversity of citizenship and the amount in controversy is in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); accordingly, the Civil Action is hereby removed to this Court pursuant to BOA's right of removal under 28 U.S.C. §§ 1332(a)(1) and 1441.

3.

BOA is an entity organized and existing under the laws of a state other than Georgia.

4.

Plaintiff Robert Mortensen (hereinafter, "Plaintiff Robert Mortensen") and Plaintiff Linda Mortensen (hereinafter, "Plaintiff Linda Mortensen"), respectively (hereinafter, Plaintiff Linda Mortensen and Plaintiff Linda Mortensen are collectively referred to as the "Plaintiffs"), are permanent resident citizen(s) of the State of Florida; however, the Property which is the subject matter of this action is located within this judicial district and division. This action, therefore, is a controversy which permits invoking the original jurisdiction of the federal district courts pursuant to 28 U.S.C. § 1332.

5.

Plaintiffs claim that the amount in controversy herein exceeds the sum or value of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of interest and costs, within the meaning of 28 U.S.C. § 1332, for purposes of conferring subject matter jurisdiction of federal district courts over the subject action.

6.

This Court has supplemental jurisdiction over the respective Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

7.

This Notice of Removal is being filed in accordance with 28 U.S.C. § 1446 and Federal Rule of Civil Procedure 81(c). In compliance with 28 U.S.C. § 1446(d), BOA is, contemporaneously herewith, filing a copy of this Notice of Removal with the Clerk of the Superior Court of Greene County, Georgia. A true and accurate copy of the notice to be filed with the Clerk of the Superior Court of Greene County, Georgia is attached hereto as **Exhibit "B"**.

8.

As evidenced on the attached Certificate of Service, written notice of the filing of this Notice of Removal has been given to the respective Plaintiffs as required by law.

9.

Counsel for BOA hereby certifies that this Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11.

10.

Venue is proper in this Court for purposes of removal under 28 U.S.C. § 1446(a), but not necessarily for purposes of 28 U.S.C. § 1391 or any other applicable venue provision. By filing this Notice of Removal, BOA does not waive any of their jurisdictional objections or other defenses.

WHEREFORE, Defendant BANK OF AMERICA, N.A. respectfully requests that this civil action proceed in this Court as an action properly removed, and that no further proceedings be had in said case in the Superior Court of Greene County, Georgia.

This 24th day of February, 2010.

Respectfully submitted,

DICKENSON GILROY LLC

/s/Tania Trumble

MONICA K. GILROY

Georgia Bar No. 427520

TANIA TRUMBLE

Georgia Bar No. 720348

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CERTIFICATE OF SERVICE

I hereby certify that I have this date filed the within and foregoing
**NOTICE OF REMOVAL OF CIVIL ACTION FROM THE SUPERIOR COURT
OF GREENE COUNTY, GEORGIA** in the above-captioned civil action with the
Clerk of Court, and that I have served the respective Plaintiffs, through counsel,
in this matter with a copy of this pleading by placing a true and correct copy of
same in the United States Mail, with prepaid first-class postage affixed thereto,
properly addressed as follows:

Henry N. Portner
Consumer Lawyers of America, P.A.
1001 Indianatown Road, Suite 105
Jupiter, Florida 33458

Kristine R. Moore Tarrer
Law offices of Kristine R. Moore Tarrer
1129 Lake Oconee Parkway, Suite 105
Eatonton, Georgia 31024

This 24th day of February, 2010.

/s/ Tania T. Trumble
TANIA T. TRUMBLE
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Attorney for Bank of America, N.A.

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